DIFFICULTIES IN ADJUSTING RATES.

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[The paper read by Professor Adams, which is inserted in these Proceedings under the above title, was a portion of a paper entitled "The Outlook for Federal Railway Legislation." After passing in rapid review three possible lines for the development of railway legislation, each of which received extended consideration, certain points were suggested as necessarily included in any bill which should aim to legalize railway pools. It should not be understood that a statement of these points commits the author to the general policy of railway pooling. The portion of the paper read was as follows:]

It would be no light task to draft a bill for the legalization of railway pools and it is not my purpose in what follows to attempt so ambitious a task. There are, however, a few points respecting which no serious controversy is possible and it may add to our appreciation of what lies in the program of legalized pooling if we refer very rapidly to some of these points.

First.—The first question which presents itself pertains to the scope of the pool. Shall it cover all traffic or apply to competitive traffic only? Upon this point the natural answer is that the pool should confine itself to those classes of freight which experience proves to have caused the disturbance in railway rates. It would not seem wise, at the outset at least, to undertake the establishment of a centralized system of railway administration covering all classes of freight, even though this establishment should be placed under governmental supervision. Should Congress be disinclined to assume the responsibility of enumerating the different kinds of freight that might be pooled, no harm would arise should the law express itself in the form of a general permission, for it is not likely that the carriers would

avail themselves of the right to pool except in the case of those classes of freight likely to be carried at cut rates. The point is this: a pooling law should not undertake the establishment of a new system; it should rather confine itself to the correction of abuses in the existing system. The only objection to this conclusion would come from those who are interested in local rather than through traffic and who fear that the former would be burdened with high charges for the support of through traffic. It is doubtful, however, if this is the manner in which the adjustment of competitive traffic through pools would operate. Should this prove to be the case it would furnish a reason for new legislation.

Second.—The agreements between the railways which by the contemplated law are to become legal contracts, should, in the second place, be published before going into effect and should be drawn according to a form prescribed by the law itself. This agreement should state the class of freight to which it applies, the rate established, the percentage of business assigned to each member of the pool, indeed, all the essential points agreed upon. The advantage of a definite form of contract is in part the general advantage that always arises from uniformity of procedure, but there is in addition to this a very particular and imperative need of a prescribed form of agreement. Should pools be legalized, care should be taken lest the agreement cover so many points as to obstruct the development of the service. An agreement, for example, that a road should not use improved equipment, or that it should not carry freight more rapidly than at a specified rate of speed, or indeed any agreement by which one road is handicapped in its competition for service with an in-

ferior road, would be against the public interest. It is claimed by advocates of pooling that competition through improvement of the service continues notwithstanding the existence of the pool, and it should be the aim of Congress in drafting a pooling law to guarantee the continuance of such competition. This it can do most effectively by enacting the form of the pooling contract.

Third.—Not only should the form of the contract be provided by law, but the period during which a pool is to continue should be determined in the same manner. The necessity of this lies in the very nature of the argument urged in favor of pools. Their only defence is that by means of them stable industrial conditions may be established. Under the present law the extreme limit which a shipper can calculate upon is three days. Nothing could be more detrimental to the satisfactory progress of industries or more embarrassing to the principle of competition in its effort to work justice between minor industries. A year at least, as is generally the case in European countries, ought to be guaranteed a legalized rate, and it should be noted that most of the considerations urged by railway attorneys against so extended a time would be set aside by the fact that the rate is legalized.

Fourth.—Another point which the law for the legalization of pools must decide pertains to the making of a rate. Proceeding upon the assumption that the carriers should not be deprived of their initiative in the matter of railway charges, the question yet remains whether their decision should be final, or whether the approval of the Inter-State Commerce Commission should be required before the rates are put in force. This is a question which has been greatly discussed and upon which it is not possible to say that there is any very clearly

defined opinion. If the writer may be permitted to express his opinion upon this question, the approval of some body whose duty it is to inquire into the inherent utility and justice of the proposed charges should be made a necessary step in the legislation of a schedule of rates. One of the chief evils of the present situation is that railways are not operated as a system. The relation of the industry of transportation to the life and development of the nation is never consciously present to the minds of railway managers in their decision of specific questions. It is true that the competitive struggle for traffic has done much in the past to direct these decisions along the line of public interest, but the public interest has never been accepted as a permanent consideration, much less a controlling influence, in the administration of railway property. Now it is proposed to exempt competitive traffic from the influence of a competition, so far at least as price of service is concerned. The power of government is invoked to make a monopoly of a certain class of traffic. Competing lines are to be consolidated into a system. The result would be same as though Congress should charter a new corporation for the management of all competitive business within prescribed territories. Under such considerations is it not reasonable for government to reserve to itself the right to veto any proposed contract which for any reason is not in harmony with the highest interests in the state? Many questions would present themselves to a body standing for the public interest, when contemplating a proposed schedule of charges, that would not be considered by men who regard property merely as an investment. If the government is going into partnership with the railways by lending to the carriers the use of its sovereign power of monopoly, it ought at least to have a seat on the Board of Direction.

Fifth.—The accounts of railways, parties to a pooling agreement, should be consolidated, so far as they pertain to competitive or pooled traffic and the Interstate Commerce Commission should be authorized to prescribe the rules of such accounting. Accounts are records of transactions and there is no possibility of controlling transactions except through access to accounts. The object of pooling, it must be remembered, is to secure stability of rates, and, even though pooling be legalized, it is not certain that parties to the agreement will maintain the rates. It is true that they who break the contract incur the risk of civil suit, but the immediate gain may be great while the penalty may be uncertain. The conclusion is evident that in order to secure stable rates, under pools, it is not only necessary to authorize a pooling agreement between the carriers, but some means must be provided by which a fracture of agreement becomes immediately known to all parties concerned, and for the attainment of this end there is no means other than the creation of common accounts for all pooled traffic. The law which establishes pooling, therefore should oblige the roads who avail themselves of its advantages, to create an outside accounting agency recognized as the representative of all but dependent upon none; and such is the nature of the public interest in this agreement that the government ought to establish uniformity in the organization and administration of these bureaus and publicity of the accounts kept by them.

Doubtless other points would arise should Congress ever seriously enter upon the discussion of the legalization of railway pools, but these mentioned are at least adequate to suggest the line along which railway legislation would be likely to develop under the influence of the pooling idea.